

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 989**

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**Introduced by Assembly Member Garrick**

February 22, 2007

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~~An act to amend Sections 17053.30 and 23617 of the Revenue and Taxation Code, relating to taxation. An act to add and repeal Sections 17053.77 and 23677 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 989, as amended, Garrick. Income and corporation taxes: credit: ~~natural heritage preservation; child care; health savings account.~~

*The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.*

*This bill would, for each taxable year beginning on or after January 1, 2008, and before January 1, 2018, allow a credit under both laws in an amount equal to the amount contributed to a health savings account, as specified.*

*This bill would take effect immediately as a tax levy.*

~~The Personal Income Tax Law authorizes various credits against the taxes imposed by that law, including a credit an amount equal to 55% of the fair market value of any qualified contribution, as defined, contributed during the taxable year pursuant to the Natural Heritage Preservation Tax Credit Act of 2000, as provided.~~

~~The Corporation Tax Law authorizes various credits against the taxes imposed by that law, including a credit in an amount equal to 30% of the cost paid or incurred for startup expenses of establishing a child~~

~~care program or constructing a child care facility, or for contributions to California child care information and referral services, as provided.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17053.77 is added to the Revenue and  
2 Taxation Code, to read:

3 17053.77. (a) For each taxable year beginning on or after  
4 January 1, 2008, and before January 1, 2018, if a taxpayer so  
5 elects, there shall be allowed as a credit against the “net tax,” as  
6 defined in Section 17039, an amount equal to the amount  
7 contributed by a taxpayer during the taxable year to a health  
8 savings account of an eligible individual pursuant to Section 223  
9 of the Internal Revenue Code, relating to health savings accounts,  
10 including contributions described in Section 106(d) of the Internal  
11 Revenue Code, relating to contributions to health savings accounts.

12 (b) The election authorized under subdivision (a) shall be made  
13 on the original return for the taxable year during which the  
14 contribution was made and shall be irrevocable.

15 (c) If a taxpayer makes the election in subdivision (a), no  
16 deduction shall be allowed under this part or Part 11 (commencing  
17 with Section 23001) with respect to the amount of the contribution  
18 described in subdivision (a) to the taxpayer or any other individual  
19 with whom the taxpayer filed or could have filed a joint return  
20 under Section 18521.

21 (d) The disallowance of a deduction for contributions to a health  
22 savings account pursuant to this section shall not alter the tax  
23 treatment of distributions from a health savings account.

24 (e) In the case where the credit allowed by this section exceeds  
25 the “net tax,” the excess may be carried over to reduce the net tax  
26 in the following year, and the seven succeeding years, until the  
27 credit is exhausted.

28 (f) This section shall remain in effect only until December 1,  
29 2018, and as of that date is repealed.

30 SEC. 2. Section 23677 is added to the Revenue and Taxation  
31 Code, to read:

1 23677. (a) For each taxable year beginning on or after  
2 January 1, 2008, and before January 1, 2018, if a taxpayer so  
3 elects, there shall be allowed as a credit against the "tax," as  
4 defined in Section 23036, an amount equal to the amount  
5 contributed by a taxpayer during the taxable year to a health  
6 savings account described in Section 106(d) of the Internal  
7 Revenue Code, related to contributions to health savings accounts.

8 (b) The election authorized under subdivision (a) shall be made  
9 on an original return for the taxable year during which the  
10 contribution was made and shall be irrevocable.

11 (c) If a taxpayer elects a credit pursuant to this section, no  
12 deduction shall be allowed under this part or Part 10 (commencing  
13 with Section 17001) with respect to the amount of the contribution  
14 providing a basis for the credit under this section.

15 (d) The disallowance of a deduction for contributions to a health  
16 savings account pursuant to this section shall not alter the tax  
17 treatment of distributions from a health savings account.

18 (e) In the case where the credit allowed by this section exceeds  
19 the "tax," the excess may be carried over to reduce the tax in the  
20 following year, and the seven succeeding years if necessary, until  
21 the credit is exhausted.

22 (f) This section shall remain in effect only until December 1,  
23 2018, and as of that date is repealed.

24 SEC. 3. This bill shall not become operative unless both this  
25 bill and Assembly Bill No. 84 from the 2007–08 Regular Session  
26 are both chaptered and become effective on or after January 1,  
27 2007.

28 SEC. 4. This act provides for a tax levy within the meaning of  
29 Article IV of the Constitution and shall go into immediate effect.

30 SECTION 1. ~~Section 17053.30 of the Revenue and Taxation~~  
31 ~~Code is amended to read:~~

32 ~~17053.30. (a) There shall be allowed as a credit against the~~  
33 ~~"net tax," as defined in Section 17039, an amount equal to 55~~  
34 ~~percent of the fair market value of any qualified contribution made~~  
35 ~~on or after January 1, 2000, and not later than June 30, 2008, by~~  
36 ~~the taxpayer during the taxable year to the state, any local~~  
37 ~~government, or any designated nonprofit organization, pursuant~~  
38 ~~to Division 28 (commencing with Section 37000) of the Public~~  
39 ~~Resources Code.~~

1 (b) ~~For purposes of this section, a “qualified contribution” means~~  
2 ~~a contribution of property, as defined in Section 37002 of the Public~~  
3 ~~Resources Code, that has been approved for acceptance by the~~  
4 ~~Wildlife Conservation Board pursuant to Division 28 (commencing~~  
5 ~~with Section 37000) of the Public Resources Code.~~

6 (e) ~~In the case of any passthrough entity, the fair market value~~  
7 ~~of any qualified contribution approved for acceptance under~~  
8 ~~Division 28 (commencing with Section 37000) of the Public~~  
9 ~~Resources Code shall be passed through to the partners or~~  
10 ~~shareholders of the passthrough entity in accordance with their~~  
11 ~~interest in the passthrough entity as of the date of the qualified~~  
12 ~~contribution. For purposes of this subdivision, “passthrough entity”~~  
13 ~~means any partnership, “S” corporation, or limited liability~~  
14 ~~company treated as a partnership.~~

15 (d) ~~If the credit allowed by this section exceeds the “net tax,”~~  
16 ~~the excess may be carried over to reduce the “net tax” in the~~  
17 ~~following year, and the succeeding seven years if necessary, until~~  
18 ~~the credit is exhausted.~~

19 (e) ~~This credit shall be in lieu of any other credit or deduction~~  
20 ~~which the taxpayer may otherwise claim pursuant to this part with~~  
21 ~~respect to the property or any interest therein that is contributed.~~

22 SEC. 2. ~~Section 23617 of the Revenue and Taxation Code is~~  
23 ~~amended to read:~~

24 23617. (a) ~~For each taxable year beginning on or after January~~  
25 ~~1, 1988, and before January 1, 2012, there shall be allowed as a~~  
26 ~~credit against the “tax” (as defined by Section 23036) an amount~~  
27 ~~equal to the amount determined in subdivision (b).~~

28 (b) (1) ~~The amount of the credit allowed by this section shall~~  
29 ~~be 30 percent of any of the following:~~

30 (A) ~~The cost paid or incurred by the taxpayer on or after~~  
31 ~~September 23, 1988, for the startup expenses of establishing a~~  
32 ~~child care program or constructing a child care facility in this state,~~  
33 ~~to be used primarily by the children of the taxpayer’s employees.~~

34 (B) ~~For each taxable year beginning on or after January 1, 1993,~~  
35 ~~the cost paid or incurred by the taxpayer for startup expenses of~~  
36 ~~establishing a child care program or constructing a child care~~  
37 ~~facility in this state to be used primarily by the children of~~  
38 ~~employees of tenants leasing commercial or office space in a~~  
39 ~~building owned by the taxpayer.~~

1 ~~(C) The cost paid or incurred by the taxpayer on or after~~  
2 ~~September 23, 1988, for contributions to California child care~~  
3 ~~information and referral services, including, but not limited to,~~  
4 ~~those that identify local child care services, offer information~~  
5 ~~describing these resources to the taxpayer's employees, and make~~  
6 ~~referrals of the taxpayer's employees to child care services where~~  
7 ~~there are vacancies.~~

8 ~~In the case of a child care facility established by two or more~~  
9 ~~taxpayers, the credit shall be allowed if the facility is to be used~~  
10 ~~primarily by the children of the employees of each of the taxpayers~~  
11 ~~or the children of the employees of tenants of each of the taxpayers.~~

12 ~~(2) The amount of the credit allowed by this section shall not~~  
13 ~~exceed fifty thousand dollars (\$50,000) for any taxable year.~~

14 ~~(e) For purposes of this section, "startup expenses" include, but~~  
15 ~~are not limited to, feasibility studies, site preparation, and~~  
16 ~~construction, renovation, or acquisition of facilities for purposes~~  
17 ~~of establishing or expanding onsite or nearsite centers by one or~~  
18 ~~more employers or one or more building owners leasing space to~~  
19 ~~employers.~~

20 ~~(d) If two or more taxpayers share in the costs eligible for the~~  
21 ~~credit provided by this section, each taxpayer shall be eligible to~~  
22 ~~receive a tax credit with respect to its respective share of the costs~~  
23 ~~paid or incurred.~~

24 ~~(e) (1) In the case where the credit allowed and limited under~~  
25 ~~subdivision (b) for the taxable year exceeds the "tax," the excess~~  
26 ~~may be carried over to reduce the "tax" in the following year, and~~  
27 ~~succeeding years if necessary, until the credit has been exhausted.~~  
28 ~~However, the excess from any one year shall not exceed fifty~~  
29 ~~thousand dollars (\$50,000).~~

30 ~~(2) If the credit carryovers from preceding taxable years allowed~~  
31 ~~under paragraph (1) plus the credit allowed for the taxable year~~  
32 ~~under subdivision (b) would exceed an aggregate total of fifty~~  
33 ~~thousand dollars (\$50,000), then the credit allowed to reduce the~~  
34 ~~"tax" under this section for the taxable year shall be limited to fifty~~  
35 ~~thousand dollars (\$50,000) and the amount in excess of the fifty~~  
36 ~~thousand dollar (\$50,000) limit may be carried over and applied~~  
37 ~~against the "tax" in the following year, and succeeding years if~~  
38 ~~necessary, in an amount which, when added to the credit allowed~~  
39 ~~under subdivision (b) for that succeeding taxable year, does not~~  
40 ~~exceed fifty thousand dollars (\$50,000).~~

1 ~~(f) No deduction shall be allowed as otherwise provided in this~~  
2 ~~part for that portion of expenses paid or incurred for the taxable~~  
3 ~~year which is equal to the amount of the credit allowed under this~~  
4 ~~section attributable to those expenses.~~

5 ~~(g) In lieu of claiming the tax credit provided by this section,~~  
6 ~~the taxpayer may elect to take depreciation pursuant to Section~~  
7 ~~24371.5. In addition, the taxpayer may take depreciation pursuant~~  
8 ~~to that section for the cost of a facility in excess of the amount of~~  
9 ~~the tax credit claimed under this section.~~

10 ~~(h) The basis for any child care facility for which a credit is~~  
11 ~~allowed shall be reduced by the amount of the credit attributable~~  
12 ~~to the facility. The basis adjustment shall be made for the taxable~~  
13 ~~year for which the credit is allowed.~~

14 ~~(i) No credit shall be allowed under subparagraph (B) of~~  
15 ~~paragraph (1) of subdivision (b) in the case of any taxpayer that~~  
16 ~~is required by any local ordinance or regulation to provide a child~~  
17 ~~care facility.~~

18 ~~(j) (1) In order to be eligible for the credit allowed under~~  
19 ~~subparagraph (A) or (B) of paragraph (1) of subdivision (b), the~~  
20 ~~taxpayer shall submit to the Franchise Tax Board upon request a~~  
21 ~~statement certifying that the costs for which the credit is claimed~~  
22 ~~are incurred with respect to the startup expenses of establishing a~~  
23 ~~child care program or constructing a child care facility in this state~~  
24 ~~to be used primarily by the children of the taxpayer's employees~~  
25 ~~or the children of the employees of tenants leasing commercial or~~  
26 ~~office space in a building owned by the taxpayer and which will~~  
27 ~~be in operation for at least 60 consecutive months after completion.~~

28 ~~(2) If the child care center for which a credit is claimed pursuant~~  
29 ~~to this section is disposed of or ceases to operate within 60 months~~  
30 ~~after completion, that portion of the credit claimed which represents~~  
31 ~~the remaining portion of the 60-month period shall be added to~~  
32 ~~the taxpayer's tax liability in the taxable year of that disposition~~  
33 ~~or nonuse.~~

34 ~~(k) In order to be allowed the credit under subparagraph (A) or~~  
35 ~~(B) of paragraph (1) of subdivision (b), the taxpayer shall indicate,~~  
36 ~~in the form and manner prescribed by the Franchise Tax Board,~~  
37 ~~the number of children that the child care program or facility will~~  
38 ~~be able to legally accommodate.~~

39 ~~(l) On or before January 1, 2011, the Franchise Tax Board shall~~  
40 ~~submit to the Legislature a report on the following:~~

- 1     ~~(1) The dollar amount of credits claimed annually.~~
- 2     ~~(2) The number of child care facilities established or constructed~~
- 3     ~~by taxpayers claiming the credit.~~
- 4     ~~(3) The number of children served by these facilities.~~
- 5     ~~(m) This section shall remain in effect only until December 1,~~
- 6     ~~2012, and as of that date is repealed.~~

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